

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

**Terri Oder,**

Petitioner.

17-VH-0209-AG-084

1700366766

November 6, 2017

**ORDER GRANTING DISMISSAL**

Currently before this Court is a *Motion to Dismiss and Allow Administrative Wage Garnishment (Motion)* without prejudice filed by the Secretary on October 13, 2017. The basis for the *Motion* is the Secretary's contention that Petitioner's contractual obligation for the subject debt has already been adjudicated by the Office of Hearings and Appeals, and a decision in favor of the Secretary was rendered on June 22, 2017. The present claim, according to the Secretary, is identical to the claim in the first hearing, the parties are identical, and a decision was rendered more than thirty days before Petitioner's second Hearing was submitted.

**Procedural History**

Upon reviewing the record it shows that Petitioner filed a *Hearing Request* on November 29, 2016 under HUD claim number 721008719. Petitioner claimed on appeal that at settlement she paid in full the debt so alleged by the Secretary but failed to produce documentary evidence in support of her position. See In re Terri Oder, 17-AM-0015-AG-005, dated June 22, 2017. Upon receipt of the Secretary's *Statement* and documentary evidence however, Petitioner repeatedly failed to reply in compliance with Orders issued by the Court. Thereafter, pursuant to 24 C.F.R. § 26.4 (d), Petitioner's appeal under HUD claim number 721008719 was dismissed by the Court on June 22, 2017.

**Discussion**

Res judicata is a jurisprudential doctrine designed to promote the finality of judicial determinations, to conserve judicial resources, and to spare adversaries the vexation and expense of redundant litigation. See Montana v. United States, 440 U.S. 147, 153 (1979). Embodied in the doctrine of res judicata is "a fundamental precept" that a "right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction cannot be disputed in a subsequent suit between the same parties." *Id.* (internal quotation marks omitted). "Under res judicata a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." Allen v. McCurry, 4498

U.S. 90, 94 (1980); see also Marrese v. American Academy of Orthopedic Surgeons, 470 U.S. 373, 376 n.1 (1985) (stating that its [doctrine of res judicata] purpose is to prevent “litigation of matters that should have been raised in an earlier suit”).

This Court likewise has held, in In re Clarence Giles, HUDOA NO. 10-H-CH-LL20 (April 23, 2010), that the doctrine of res judicata applies when the Court has previously ruled in favor of the Secretary, and, the present claim is identical to the claim that was heard in Petitioner’s first hearing, that involved the same parties as in the first hearing, and that reached the original ruling based upon the merits of the case. Herein, the present claim is identical to the claim from the previously adjudicated case because, in both cases, the claims were identified by the same claim number; the parties, Petitioner Terri Oder and HUD, the Government, were the same; and finally, the original ruling on June 22, 2017 was decided on the merits of the case and later properly dismissed pursuant to 24 C.F.R. § 26.4 (d).

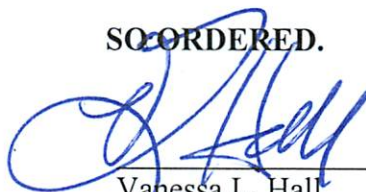
The doctrine of res judicata embodies the principle that “a party who once has had a chance to litigate a claim before an appropriate tribunal usually ought not to have another chance to do so.” SBC Communications, Inc. v. FCC, 407 F.3d 1223, 1229 (D.C. Cir.2005) (quoting Restatement (Second) of Judgments at 6 (1982) (emphasis in original)). Likewise, Petitioner in this case had a chance to litigate her claim during the first hearing, previously adjudicated by this Court then dismissed. The Court therefore finds that the doctrine of res judicata applies here because the final judgment previously issued by this Court on the merits of Petitioner’s claim precludes Petitioner from relitigating the same issues in the case at bar. Petitioner should not, and will not, be granted another chance to do what she failed to do at the previously adjudicated hearing.

### **Conclusions of Law**

Consistent with the established case law precedent and the standard for applying the doctrine of res judicata, the Secretary’s *Motion to Dismiss* without prejudice, as barred by res judicata, is hereby **GRANTED**.

All other pending orders related to the present case are rendered moot. The *Order* issued on June 22, 2017 of course remains in FULL FORCE AND EFFECT.

**SO ORDERED.**



Vanessa L. Hall  
Administrative Judge